IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 21/07/2003

CORAM

THE HONOURABLE MR.JUSTICE A.KULASEKARAN

W.P.No.8806 of 2003 AND W.P.No.9707 of 2003
AND
W.P.M.P.Nos.11284 & 12323 OF 2003

W.P.No.8806 OF 2003 :

The Indian Institute of Architects,
Tamil Nadu Chapter, by its Chairman
A.R.J.Manoharan,
4-A, 3rd Floor, Raja Annamalai Building,
45 (Old No.19), Rukmani Lakshmipathy Road,
Egmore, Chennai-600 008. ... Petitioner

-Vs-

1.The State of Tamil Nadu,
rep.by the Secretary,
Higher & Technical Education Department,
Fort St.George,
Chennai-600 009.

2.Anna University,
rep.by the Vice Chancellor,
Sardar Patel Road,
Guindy, Chennai-600 025.

3.The Council of Architecture,
rep.by the President,
India Habitat Centre,
Core 6A, First Floor,
New Delhi-110 003. ... Respondents

W.P.No.9707 OF 2003 :

1.Council of Architecture,
(Statutory Body constituted under
The Architecture Act, 1972)
through the president,
Core 6-A, First Floor,
India Habitat Centre,

Lodhi Road, New Delhi-110 003... Petitioner

-Vs-

1.The State of Tamil Nadu,
rep.by the Secretary,
Higher & Technical Education Department,
Fort St.George,
Chennai-600 009.

2.Anna University,
rep.by the Vice Chancellor,
Sardar Patel Road,
Guindy, Chennai-600 025. ... Respondents

Petitions under Article 226 of the Constitution of India, praying for issuance of a writ of mandamus, as stated therein.

For petitioner in W.P.8806/2003 : Mr.Aravind P.Datar,
Senior Counsel
for Mr.Muizz Ali.

For petitioner in W.P.9707/2003 : Mr.V.T.Gopalan,
Senior Central Govt.
Standing Counsel.

For respondent 1 : Mr.S.P.Prabakaran, AGP.

For respondent 2 : Mr.G.Masilamani,
Senior Counsel

:COMMON ORDER

Since the relief sought for is one and the same in both the Writ Petitions, they are being disposed of by a common order.

2. Since the petitioner in W.P.No.9707 of 2003 and the third respondent in W.P.No.8806 of 2003 are one and the same, they will be referred to as 'the petitioner', along with the petitioner in W.P.No.8806 of 2003.

3. The petitioner in W.P.No.8806 of 2003 is a registered Society, having Chapters all over India. It is the Tamil Nadu Chapter and has 6 50 members through out the State. The object of the Society is education, training and professional development of architecture students and practising architects. On 26.01.2003, the second respondent, in news item of The Hindu, stated that the students, seeking admission to B.Arch. Degree, also also appear for the Tamil Nadu Professional Course Entrance Examination (TNPCEE), hereinafter referred to as ' TNPCEE' and no separate Aptitude Test would be conducted. The petitioner has represented on 28.01.2003 to the second

respondent, pointing out the regulations, guidelines and mandatory requirements, which have been in practice for the last 40 years and requested to restore aptitude tests. On the request made by the petitioner to the third respondent, which is the Apex Statutory Authority, a letter dated 31.01.2003 was sent to the second respondent, pointing out that the admission should be done for B.Arch. only after Aptitude Test. The second respondent has not responded to the said letters and, in stead, published an advertisement dated 02.03.2003 in The Hindu, wherein it was mentioned that no Aptitude Test for B.Arch. Course would be conducted. The second respondent has dispensed with the said Aptitude Test for the academic year 2003, on the ground that it is not required when admissions are being made through competitive examination.

4. The learned Senior Counsel and Additional Solicitor General of India Mr.V.T.Gopalan, appearing for the petitioner in WP No. 9707 of 20 03 has submitted as follows:

The education and provision of architecture are governed by the Architects Act, 1972, hereinafter referred to as Act. Chapter 2 of the Act deals with the Council of Architecture, which is vested with the power to prescribe minimum standards to be followed by the institution in India. Under Section 45 (2) of the Act, the Council has the power to make the regulations and sub-clauses (e) (g) (h) (j) are relevant in the context of prescribing the minimum qualification and the conditions of admission. The Council, under Section 45 (2) (e) (g) (h) (j) has made The Council of Architecture (Minimum Standard of Architectural Education) Regulations, 1983, hereinafter referred to as Regulations with the prior approval of the Central Government and the same was published in the Gazette of India on 26.03.1983 and 27.08.1983. These regulations prescribe the minimum standard of architectural education to be maintained by the colleges or institutions and these regulations are also applicable in matters relating to admission to the architecture course through out India. Tamil Nadu also followed the said regulations till the last academic year. This Aptitude Test is not required for other branches of engineering except B.Arch. Course. All India Council for Technical Education deals with all technical education in the country and as far as the architectural education is concerned, the Council of Architecture is the governing authority. All universities and educational institutions which are offering 5 year B.Arch. Course have been conducting the Aptitude Test. The guidelines issued by the Council pursuant to Regulations have statutory force.

5. The learned Senior Counsel has further submitted that Clause 3 of the regulations is relating to duration and stages of the course and Clause 4 is relating to admission to the architecture course, wherein it is stated that no candidate with less than 50% of marks in aggregate shall be admitted to the architecture course unless that person has passed the 10+2 examination with Mathematics and English as subjects at 10+2 level with minimum 50% marks. The institutions, which are conducting B.Arch.Course, may subject the candidates, seeking admission to the architecture course, to Aptitude Test, specially designed to assess the candidates' aptitude. The institution shall not give weightage of more than 50% marks for Aptitude Test in the matter of admissions. The Aptitude Test is mandatory for admissions in B. Arch., in all colleges, universities, including the minority institutions, non-resident

Indian. The candidates admitted without appearing for the Aptitude Test in architecture and who have been granted B.Arch. Degree shall not be deemed to have attained the recognised qualification listed in the schedule of qualification appended to the Act. The Aptitude Test shall consist of two papers, namely, (i) Aesthetic Sensitivity - 100 marks - duration of test : 2 hours, and (ii) Drawing - 100 marks - duration of test : 2 hours. The said test is to evaluate the candidates perception, imagination and observation, creativity and communication, architectural awareness and drawing aptitude of the candidate. It is also submitted the learned Senior Counsel that counselling for the candidates who have applied for admission to the 5 year B.Arch. Course in architecture should be held independently.

6. Relying on the regulations and guidelines, the learned Senior Counsel advanced the arguments that like the guidelines issued by AICTE, for the architectural education, the guidelines issued by the Council of Architecture are binding. No valid reason is assigned by the second respondent for dispensing with the Aptitude Test. B.Arch. education is different from other disciplines of engineering courses which is evident from the guidelines that no candidate with less than 50% marks in aggregate shall be admitted to architectural course with Mathematics and English as subjects at the level of 10+2, the duration being 5 years for this course alone, whereas no such conditions for admissions in other disciplines.

7. It is also brought to the notice of this Court by the learned Senior Counsel that the proviso to Clause (4) (3) of the regulations stipulates that " Provided that no separate aptitude tests may be conducted where admissions are made through competitive examinations.", which means when the competitive examination is inclusive of aptitude, no separate Aptitude Test is required, which has been misconstrued by the University. The Council of Architecture found it necessary to issue guidelines which were issued in the year 1994, wherein it is explained elaborately that the Aptitude Test is required for admission into 5 year B.Arch.Course to assess the candidates' aptitude, essentiality of aptitude test, eligibility for admission, subjects relating to aptitude test, weightage etc.

8. The learned Senior Counsel Mr. V.T. Gopalan also relied on Clause 8 (3) of All India Council for Technical Education (Norms and Guidelines for Fee and Guidelines for Admissions in Professional Colleges) Regulations, 1994, hereinafter referred to as AICTE Regulations that the Council of Architecture constituted under Section 3 of the Architects Act, 1972, shall formulate a comprehensive entrance test including aptitude test on an all India basis. It is canvassed by the learned Senior Counsel that the said regulation says that the Council of Architecture, the Apex Body, is competent enough to formulate the comprehensive entrance test, including aptitude test for admission into 5 year B.Arch. Course on all India basis.

The Apex Body felt it mandatory to hold Aptitude Test, which is reflected in the regulations and guidelines made under Section 45 of the Act.

9. It is also brought to the notice that almost all institutions in

India are holding aptitude test and dispensing with the same by the second respondent will derecognise the B.Arch Degree offered and candidates, who passed, will not be entitled to practise as architects or to take up the employment.

10. The learned Senior counsel Mr. Aravind P. Datar appearing for the Indian Institute of Architects relying on the Act, Regulations and guidelines submitted that the aptitude test is mandatory for admission in B.Arch., otherwise the candidates shall not be deemed to have attained the recognised qualification. Learned Senior counsel also reiterated the arguments of Mr. V.T. Gopalan.

11. The learned Senior Counsel Mr.G.Masilamani, appearing for the second respondent/Anna University submitted that the regulations, 1983, were made in exercise of the power conferred under clauses (e) (g) (h) (j) to sub-section 2 of Section 45 read with Section 21 of the Architects Act, 1972. Under sub-clause (3) of Section 43, every regulation made under this Section, shall be laid as soon as is it is made before the Parliament and after both the Houses agreed, it has the effect of statutory force. The guidelines made by the Council cannot be equated with the regulations. If there is any inconsistency between the regulations and the guidelines, the regulations prevail.

12. According to Mr.G.Masilamani, the guidelines are inconsistent and contrary to the provisions of regulations. It is demonstrated by the learned Senior Counsel that proviso to sub-clause 3 of Clause 4 of the regulations contemplates that no separate Aptitude Test may be conducted where admissions are made through competitive examinations. Thrusting his argument, Mr.G.Masilamani pointed out that under Sub-cause 3 to clause 4 of the regulations, it is mentioned that institution may subject the candidates seeking admission for the architectural course to aptitude tests specially designed to assess the candidates' aptitude, provided no separate competitive examination is conducted and the selection is made to B.Arch., through a competitive examination, no aptitude test is required. It is stated by the learned Senior counsel that the regulation to sub-clause (4) of clause 4 states that the institution shall not give weightage of more than 50% marks for aptitude test in the matter of admission whereas the guideline 4.0 states that with regard to Architectural Aptitude, 50% is minimum, which is apparently contrary to the regulation. It is also pointed that the regulation says that institution may subject the candidates to aptitude test only in the absence of competitive examination, but the guideline 1.4 (c) states that a separate aptitude test in architecture should be conducted and such test should not be combined with the test for admission to engineering, pharmacy, medicine and other disciplines. Mr.G.Masilamani pointed out the other clauses in the guidelines, which are excessive, though they are allegedly framed pursuant to the regulations.

13. Mr.G.Masilamani further submitted that the Co-ordination Committee for Tamil Nadu Professional Courses Entrance Examinations, 2003, which is consisting of members, representatives and special invitees, in its meeting held on 24.01.2003, discussed several subjects, including the aptitude

test. The members of the said committee, passed a resolution, after deliberations that there is no need to conduct the aptitude test in architecture, since B.Arch Degree Programme is considered as one of the branches of engineering and the candidates, while appearing for counselling according to their rank in the merit list based on the qualifying examination and TNPCEE, they will be selecting any one of the programmes including B.Arch.

14. The Architects Act 1972 (Act 20 of 1972) has come into force with effect from 01.09.1972. The statement of object and reasons of the Act is to the effect that, after independence, more particularly, with the implementation of Five Year Plans, the building construction activity in our country has expanded almost on a phenomenal scale. Large variety of buildings, many of esteemed compensity and magnitude like multi-storeyed buildings, factory buildings, residential houses are being constructed every year. With this increase in the building activity, many unqualified persons, calling themselves as architects, are undertaking the construction of buildings, which are uneconomical and quite frequently unsafe, thus bringing into disrepute the profession of architects. Many organisations, including Indian Institute of Architects, have repeatedly emphasised the need for statutory regulation to protect the general public from unqualified persons, working as architects. With the passing of this legislation, it will be unlawful for any person to designate himself as an architect, unless he has requisite qualification and experience and is registered under the Act. The main features of the Act are; creation of a body corporate by the name of Council of Architecture, vesting the requisite powers in the Council, enrolment initially of a person holding a degree, subsequent enrolment of persons, who hold degrees or diplomas in architecture, holding of enquiries in the misconduct of registered architects, prescribing the standard of professional conduct and etiquette and assessment of standards of education and training of architects within the countries. The Parliament before passing the Bill has thoroughly discussed the above factors.

15. Section 2 (2) (b) defines Council means, the Council of Architecture constituted under Section 3. Section 2 (c) defines Indian Institute of Architects means the Indian Institute of Architects registered under the Societies Registration Act, 1860. Section 3 speaks about the constitution of Council of Architecture. Section 19 is relating to inspection of examination. The Executive Committee shall, subject to regulations, if any made by the Cou ncil, appoint such number of inspectors as it may deem requisite to inspect any college or institution where architectural education is given or to attend any examination held by any college or institution for the purpose of recommending to the Central Government recognition of architectural qualifications granted by that college or institution.
Sub-clause 2 of Section 19 speaks that Inspectors shall not interfere with the conduct of any training or examination, but shall report to the Executive Committee on the adequacy of the standards of architectural education including staff, equipment, accommodation, training and such other facilities as may be prescribed by regulations for giving such education or on the sufficiency of every examination which they attend.

16. Section 21 pertains to minimum standards of architectural

education. The council may prescribe the minimum standard of architectural education required for granting recognised qualifications by colleges or institutions in India.
17. Section 45 contemplates the Power of Council to make regulations.
(1) The council may, with the approval of the Central Government, make regulations not inconsistent with the provisions of this Act, or the rules made thereunder to carry out the purposes of this Act.
(2) In particular and without prejudice to the generality of the foregoing power, such regulations may provide for.
Sub-clause (2) (e) pertains to the courses and periods of study and of practical training, if any, to be undertaken, the subjects of examinations and standards of proficiency therein to be obtained in any college or institution for grant of recognised qualifications.
Sub-clause (2) (h) speaks about the conduct of professional examinations, qualifications of examiners and the conditions of admission to such examinations.
Sub-clause (2) (j) pertains to any other matter which is to be or may be provided by regulations under this Act and in respect of which no rules have been made.

18. Invoking Section 45, the Council of Architecture made regulations, 1983, which came into force on 26.03.1983 and 27.08.1983. Clause 3 of regulations contemplates duration and stages of the course. The architecture course shall be of minimum duration of 5 academic years or 10 semesters or 16 working weeks each approximately. The architecture course may be conducted in two stages, in which the first three academic years pertain to basis standard course and the second stage shall be of two academic years. It is evident that the architecture course is totally different from other disciplines of engineering courses.

19. Clause 4 (1) of Regulations fixes minimum qualification of 50% marks in aggregate with Mathematics and English as the subjects of +2 examination. Sub-clauses 3 and 4 of clause 4 are relevant for our case, where sub-clause 3 denotes that the institutions may subject the candidates, seeking admission to the architecture course, to aptitude tests, specially designed to assess the candidates' aptitude, provided that no separate aptitude tests may be conducted where admissions are made through competitive examination and sub-clause 4 denotes that the institution shall not give weightage of more than 50% for aptitude test in the matter of admission.

20. Below clause 8 of the regulations, it is mentioned that notwithstanding anything contained in these regulations, the institutions may prescribe minimum standards of architectural education provided such standard does not, in the opinion of the Council, fall below the minimum standards prescribed from time to time by the Council to meet their requirements of the profession and education thereof. The abovesaid clause empowers the Council to prescribe from time to time the requirements of the profession and education thereof.

21. To justify the dispensation of the Aptitude Test, it is submitted by the Anna University that the University subjects the candidates for

competitive examination and hence, no aptitude test is required. The University has also taken shelter of the word 'may' and argued that the provision of aptitude test is not directory in nature. No doubt, the use of word 'may' in a statutory provision would not by itself show that the provision is directory in nature. In some cases, the Parliament/Legislature may use the word 'may' as a matter of pure conventional courtesy and yet intend a mandatory force in order to interpret the legal import of the word 'may'. It is the duty of the Court to consider various factors, namely, the object and scheme of the Act, the context and the background, against which, the words have been used, the purpose and advantages sought to be achieved by the use of those words and the like. It is also the duty of the Court, where the word 'may' involves a discretion coupled with an obligation or where it confers a positive benefit to a general clause of subjects or where the Court advances a remedy and suppresses the mischief or where giving the word a directory significance would defeat the very object of the Act. The word 'may' should be interpreted to convey a mandatory force.

22. As I have already mentioned supra, the statement of object and reasons of the Act was discussed by the Parliament, which is inclusive of the assessment of the standards of education and training of architects within the countries. This Act is similar to Advocates' Act (Act 25 of 1961), Chartered Accounts Act, (Act 38 of 1949) and Cost and Works Accounts Act (Act 23 of 1959), which are special in nature.

23. Section 21 of the Act empowers the Council to prescribe the minimum standards of architectural education required for granting recognised qualification by colleges or institutions in India. Section 45 invests powers to the Council to make regulations not inconsistent with the provisions of the Act. Invoking Section 45, Regulations,1983, were made by the Council, which were approved by the Central Government. The said regulations, insist 50% marks in aggregate in +2 or equivalent public examination including in Mathematics and English. In other disciplines of engineering courses 50% minimum marks in English is not compulsory whereas it is made compulsory for the purpose of arriving at 50% marks in aggregate in +2 examination to seek admission in B.Arch., Sub-clause (3) of clause 4 of the regulations contemplates that institutions may subject the candidates, seeking admission to the architectural course, to aptitude test specially designed to assess the candidates' aptitude. No doubt, there is a proviso, which says that no separate aptitude test may be conducted where admissions are made through competitive examinations. The aptitude test is specially designed to assess the candidates' aptitude. The B.Arch., is a subject different from other B.E., Courses. To evaluate the candidates perception, imagination, observation, creativity, communication, and architectural awareness, aptitude test is provided. The aptitude test also judge the drawing aptitude of the candidates. The import of the said provision is that if the specially designed aptitude test is part of competitive examination, then no separate aptitude test is required. It is not the case of the University that TNPCEE includes specially designed aptitude test to assess the candidates' aptitude.

24. The Government of India made All India Council for Technical Education (norms and guidelines for fees and guidelines for admissions in

professional colleges) Regulations 1994 in exercise of powers conferred under Section 10 read with Section 23 of All India Council for Technical Education Act, 1987. The said Regulation applies to professional colleges imparting diploma, degree or equivalent course in Engineering, Architecture, Town Planning, Management, Pharmacy, Electronics, Computer Science, applied Arts and Crafts and such other programmes or areas relating to admissions of students in professional colleges and charging tuition fee. Clause 8 (3) has demarcated the area of operation of the Council of Architecture in that field thereby excludes itself to enable the Council of Architecture to formulate a comprehensive entrance test including aptitude test on an all India basis. The guidelines for admission to first year of full time five year degree course in B.Arch., has been made pursuant to Regulations 1993 wherein in clause 1.4 (a), (b), (c), 1.5, 1.6 and 1.7 it is expressed in clear terms the need, essential and mandatory of aptitude test. The provisions 2.0, 3.0, 3.1, 3.2 of the said guidelines are relating to eligibility for admission and details of aptitude test. These guidelines are made by the council which is empowered under the Act and Regulations.

25. The context and background against which the word "may" has been used indicate a discretion coupled with an obligation, hence it should be given a mandatory force. Their Lordships, while interpreting the word 'may' in the case of State of Uttar Pradesh Vs. Jogendra Singh reported in 1963 SC 1618 held that

"There is no doubt that the word 'may' generally does not mean must or shall. But it is well settled that the word 'may' is capable of meaning must or shall in the light of the context....

Sometimes, the legislature uses the word 'may' out of deference to the high status of the authority on whom the power and the obligation are intended to be conferred and imposed."

Hence, I have no hesitation to say that the aptitude test is mandatory in view of the object and scheme of the Act and Regulations.

26. The legislative activity of the State has been increasing in response to the increase in its functions and responsibilities. When legislature is pre-occupied with more important policy matters and rarely finds time to discuss matters of details. It therefore formulates a legislative policy and gives power to the Administration to make the subordinate legislation for the purpose of implementing the policy. If the nature of one particular Act is technical, it may be necessary to obtain the assistance of Experts in providing matters of details. Once legislature or Parliament left the matter to the experts to decide, it cannot be laid down by it. Delegated legislation requires less formal procedure and can be a good device for flexibility. In this case, the Regulations empower the Council to prescribe norms/ minimum standards to meet the requirements of the profession and education of Architecture. Hence, I am of the view that the guidelines prescribed have statutory force. The guidelines are neither inconsistent nor contradictory or excess of authority actually delegated.
27. Admittedly, till the last academic year, the University has

conducted aptitude test separately for admission into B.Arch.Course. The predominant reason assigned for dispensing with the aptitude test is the consequential migration of students from B.Arch.programme to B. E./B.Tech programme and vice versa hence, the Committee felt that there is no need to conduct the aptitude test. The migration of students from one discipline to another is, no doubt, based on employment opportunities during the relevant period, which is temporary in nature. The demand in some disciplines in B.E., courses of yester years not subsists now. Similarly, the demand in current years may not be continued in the years to come. The demand and supply may vary from time to time, but the standard shall not be degraded on the basis of demand in the market. Education is not a marketable commodity. The educational institutions are generators of excellence. Dilution of standard of Education on the basis of temporary demand shall not be encouraged. The reasons assigned by the University for dispensing with the aptitude test is only based on the temporary demand in a particular discipline, which is untenable. Of course, some discrepancy is found in respect of minimum and maximum marks for Aptitude Test, as pointed out by the learned Senior Counsel Mr.G.Masilamani, in the regulations and guidelines, which can be set right by the authorities concerned.

28. In the light of what is stated above, I direct the second respondent University to hold the Aptitude Test as done in the yester years expeditiously, if necessary in a revised method, so that the selected candidates may pursue their course without any difficulties or hurdles.

Writ Petitions are allowed. No costs. Consequently, the connected W.P.M.Ps. are closed.

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Index : Yes
Internet : Yes
To :

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